

1 The Honorable Benjamin H. Settle  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
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10 UNITED STATES OF AMERICA,  
11 for the Use and Benefit of HARRIS PACIFIC  
12 NORTHWEST, LLC,

13 Plaintiff,

14 v.  
15 TRAVELERS CASUALTY AND SURETY  
16 COMPANY OF AMERICA,  
a Connecticut corporation,

17 Defendant.

18 And  
19 WALSH CONSTRUCTION COMPANY, an  
20 Illinois corporation,

21 Intervenor.

No. 3:21-cv-05285-BHS  
JOINT STATUS REPORT,  
STIPULATION, AND  
ORDER RE CONTINUED  
STAY OF  
PROCEEDINGS

22 COME NOW, Plaintiff Harris Pacific Northwest, LLC (“**Harris Pacific**”), Defendant  
23 Travelers Casualty and Surety Company of America (“**Travelers**”), and Intervenor Walsh  
24 Construction Company (individually “**Walsh**” and collectively, the “**Parties**”) through their  
25 counsel of record, to present the following stipulation for a continued stay of proceedings and  
26 a continuance of any court deadlines related to the above-captioned action.  
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STIPULATION AND ORDER RE STAY OF  
PROCEEDINGS - 1  
[CASE NO. 3:21-cv-05285]

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1 The Parties stipulate to the following facts:

2 1. A Complaint was filed by Harris Pacific in the above-captioned action.

3 2. The above-entitled action concerns a Miller Act Claim for subcontract work by

4 Harris Pacific for Walsh.

5 3. The subcontract work concerns a construction project where Walsh is acting as the

6 General Contractor and for which the Department of the Navy – Naval Facilities

7 Engineering Command Northwest (“NAVFAC”) is the Owner.

8 4. Walsh has submitted requests for equitable adjustment to NAVFAC, hereinafter

9 referred to as the “**Owner claims.**” The Owner claims include Walsh’s own

10 requests for increased costs and time attributable to NAVFAC, and the Owner

11 claims also include the updated claim from Harris Pacific that was submitted to

12 Walsh on or about April 15, 2022.

13 5. Travelers is the surety for Walsh’s payment bond submitted pursuant to the Miller

14 Act.

15 6. Walsh submitted Harris Pacific’s claims to NAVFAC together with Walsh’s own

16 claim and claims of other subcontractors on the same project. Having previously

17 obtained some relief from the Government based on project delays and impacts

18 attributable to NAVFAC, Walsh supports Harris Pacific’s entitlement to equitable

19 compensation from the Government to the extent that the mechanical subcontractor

20 sustained cost impacts from the same issues. On September 30, 2022, NAVFAC

21 informed Walsh that, due to the complexity of the issues identified in the claim as

22 well as audits to be performed, the Government could not issue a final Contracting

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1 Officer's decision before March 30, 2023. However, on March 31, 2023, the Navy  
2 advised Walsh that it would need additional review time to issue a Contracting  
3 Officer's Final Decision, advising that such a decision will be issued on or before  
4 October 31, 2023.

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6 7. The undersigned parties previously agreed to stay the above-entitled action to allow  
7 for the NAVFAC Contracting Officer to issue a determination of the Owner claims.  
8 While Harris Pacific has not yet seen much progress with a Government audit,  
9 Harris Pacific gives NAVFAC the benefit of the doubt agreeing to extend the stay  
10 of the above-entitled action for an additional seven (7) months to allow for a  
11 determination of the Owner claims.

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13 8. As outlined in the previous Status Report, Walsh notes that Article 11 of its  
14 subcontract with Harris Pacific (attached as Exhibit B to Harris Pacific's  
15 Complaint) requires the subcontractor to stay and suspend any legal action against  
16 Walsh and Travelers until Walsh's claims against NAVFAC have been adjudicated.  
17 Harris Pacific responds that such language in the subcontract cannot support  
18 extension of the subcontractor's Miller Act rights for an unreasonable period of  
19 time and is also conditioned upon Walsh diligently and expeditiously pursuing a  
20 pass-through claim on behalf of Harris-Pacific. The parties do not believe that this  
21 issue needs to be decided by the Court at this point, however, because Harris Pacific  
22 is willing to accept a further seven-month stay as provided herein.

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24 9. The Parties further agree that by entering into this stipulation, neither Travelers,  
25 Walsh, nor Harris Pacific is waiving or releasing its rights and defenses under the  
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1           Miller Act or under Article 11 of the subcontract, including but not limited to  
2           Walsh's contractual right to demand arbitration of any remaining claims between  
3           Walsh and Harris Pacific.  
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5           10. By entering into this stipulation, the Parties are attempting to avoid unnecessary  
6           costs and fees and neither party waives any claims, counterclaims, affirmative  
7           defenses, or defenses, and all such rights are expressly reserved.  
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9           11. Based on the above facts, the Parties jointly move, stipulate, and agree to, entry of  
10           an order by the Court in the above-titled action:

11           a.       staying proceedings for seven (7) months;  
12           b.       continuing any deadlines for seven (7) months;  
13           c.       requiring the Parties to file with the Court, no later than seven (7) months from

14           the entry of the order below, a joint report regarding the status of the Owner claims, and the  
15           Parties' positions as to any further extension of the stay and continuance.  
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17           DATED this 10<sup>th</sup> day of May, 2023.  
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19           **AHLERS CRESSMAN & SLEIGHT  
20           PLLC**

21           By: /s/ Lindsay T. Watkins  
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            *Attorneys for Plaintiff*

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2 Pursuant to the above stipulation, this action and all related deadlines are STAYED for  
3 a period of seven (7) months from the date of entry of this Order. No later than seven (7)  
4 months from the date of entry of this Order, the Parties shall file with the Court a report  
5 regarding the status of the Owner claims referred to in the stipulation of the Parties and the  
6 Parties' positions as to any further extension of the stay.  
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8 IT IS SO ORDERED this 11th day of May, 2023.  
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11 The Honorable Benjamin H. Settle  
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14 Presented by:  
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16 **AHLERS CRESSMAN & SLEIGHT  
PLLC**

17  
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*Attorneys for Plaintiff*

## CERTIFICATE OF SERVICE

I hereby certify that on the date listed below I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

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*Attorneys for Defendant Travelers Casualty and Surety Company of America and Walsh Construction Company*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: This 10<sup>th</sup> day of May, 2023, at Seattle, Washington.

/s/ Christine J. Smith  
Christine J. Smith, Legal Assistant